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Supreme Court of the United States

OCTOBER TERM, 1949.

No. 519.

VIVIAN COWGILL MENEES, PETITIONER,
VS.
LILLIAN COWGILL ET AL., RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI, DIVISION NUMBER ONE.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Vivian Cowgill Menees, respectfully petitions for a writ of certiorari to review the final judgment and decision of the Supreme Court of Missouri, Division Number One, the highest court of the State (Motion to transfer to the court *en banc* having been filed and overruled), modifying a judgment of the Circuit Court of Jackson County, Missouri, and as modified, affirming said judgment to the effect that your petitioner, while the equitably adopted daughter of defendant, Lillian Cowgill, that as between petitioner and all respondents (cousins of Guy M. Cowgill), she was not the adopted daughter of

Guy M. Cowgill, deceased husband of Lillian Cowgill, and had no rights or status as such, having held in the opinion that a Missouri equitable adoption (controlled by Missouri law), is binding only on the parties to the adoption contract or those in privity with such parties, and refusing to apply the laws of descent and distribution of the State of Iowa, though pleaded and relied upon by all the parties to the suit, to determine whether or not, since properties mentioned in the pleadings were controlled by the laws of Iowa and all parties to the suit were claiming through the identical sections of that law, through and by virtue of such laws and the identity of claims made, the petitioner and respondents were or were not in fact privies as regards the descent of that property. If the issue of privity (claimed under Iowa law) had been determined, and, determined favorably to the petitioner, then she would have been declared the adopted daughter (claimed under Missouri law) of Guy M. Cowgill, deceased.

OPINIONS BELOW.

The opinion of the Supreme Court of Missouri, Division Number One, is reported in Vivian Cowgill Menees, Appellant, vs. Lillian Cowgill *et al.*, Respondents, 223 S. W. 2d 412. Copy of opinion (R. 42) and the opinion of the Kansas City Court of Appeals, transferring said cause to the Supreme Court, is found in Menees vs. Cowgill, (Mo. App.) 214 S. W. 2d 561, 571.

JURISDICTION.

This action is brought under the Missouri Declaratory Judgment Act, and respondents were made parties defendant as required by that act for the reason that petitioner and respondents both claimed property being

administered upon in Montgomery County, State of Iowa, petitioner and respondents claiming said property through the identical statutes of the State of Iowa, the petitioner pleading a claimed status and reliance upon said statutes, as provided by Missouri law, and respondents pleading the effect thereof, and admitting or pleading that if petitioner have the claimed status of an adopted child that she then would be entitled to said property under Iowa law, and that if she be not the adopted daughter of one Guy M. Cowgill, then respondents would be entitled to all said property under the laws of said state.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257, in that petitioner in said proceedings claimed the constitutional right and privilege granted to her by Section 1, Article IV of the Constitution of the United States to have the Supreme Court of Missouri give full faith and credit to the public acts of the state of Iowa. The opinion and judgment of the Supreme Court of Missouri, Division One, was entered on the 12th day of September, 1949 (R. 41-52) and petitioner's motion for rehearing (and to transfer to Court *en banc*) was denied by that court on October 10, 1949 (R. 66). The Iowa statutes were neither discussed nor applied by the Supreme Court.

STATUTES INVOLVED.

The applicable statutory provisions from the Iowa 1939 Code relied upon and pleaded by all the parties follow:

> "Section 12017. If the intestate leave no issue, the one-half of his estate shall go to his parents and the other half to his wife; if he leaves no wife the portion which would have gone to her shall go to his parents.
>
> Section 12024. If one of his parents be dead, the portion which would have gone to such deceased par-

ent shall go to the surviving parent, including the portion which would have belonged to the intestate's wife had she been living.

Section 12025. If both parents be dead, the portion which would have fallen to their share by the above rule, shall be disposed of in the same manner as if they had outlived the intestate and died in the possession and ownership of the portion thus falling to their share, and so on through ascending ancestors and their issue.

Section 12016. Subject to the rights and charges hereinbefore provided, the remaining estate of which the deceased shall, in the absence of a will, descend in equal shares to his children, unless one or more of them is dead, in which case the heirs of such shall inherit his or her share in accordance with the rules herein prescribed, in the same manner as though such child had outlived its parents."

QUESTIONS PRESENTED.

No state court has heretofore attempted to settle an issue between litigants involving the descent of property located in another state without applying the laws of the state where the property was located, nor has any state heretofore chosen to ignore the pleaded laws of another state in making a decision germane to the descent of property in that state. The following federal questions are therefore, for decision by this Court for the first time.

1. In determining matters germane to the descent of Iowa property can a Missouri court wholly ignore the applicable and pleaded laws of descent and distribution of the state of Iowa without violating Section 1, Article IV, of the Constitution of the United States?

2. Where, as regards the disposition of property located in Iowa, the only issue between litigants claiming

rights to such property is whether or not there is privity of claim between them—the presence of such privity being the determining factor in petitioner's right to claimed status—the litigants all pleading and relying upon the identical sections of the Iowa law as the basis of their several claims to such property, then and under such circumstances, can a Missouri court ignore the pleaded applicable Iowa statutes and determine both the petitioner's status *and the parties bound thereby* solely on principles of Missouri law wholly foreign to the pleaded Iowa law which determines the descent of the property involved without doing violence to the mandate of Section 1, Article IV of the United States Constitution?

STATEMENT.

The facts in the matter are few and simple. The respondent, Lillian Cowgill, and her husband, Guy M. Cowgill, deceased, agreed to adopt the petitioner. The adoption contract was in all respects complied with by the Cowgills, the petitioner and petitioner's father, with the one exception that no statutory proceedings of adoption were had by the Cowgills. After the death of Guy M. Cowgill, his sister, Clara Cowgill Cochrane, died intestate as to a portion of her property, a resident of the state of Iowa, owning property in said state which property is now being administered upon in the state of Iowa.

The adoption laws of neither the states of Missouri nor Iowa give any inheritable rights to the collateral kin of the adopting parties. Missouri recognizes the principle of equitable adoption as creating the status of adoption. Iowa does not. In Iowa (where the deceased leaves neither spouse nor child) inheritance goes to heirs of other designated parties, irrespective of blood relationship. In Missouri such inheritance follows the blood of the deceased.

The present proceedings were instituted in the state of Missouri for the reason that most of the respondents and petitioner live in that state. In the petition it is alleged (R. 12) that petitioner had made claim under the laws of *descent of intestate property of the state of Iowa* that she was entitled to the intestate property left by Clara Cowgill Cochrane, had served notice to that effect and that her claim and right to said property was based on two propositions:

1. That she had the status of an adopted child of said Cowgills, paragraph 10 of the petition (R. 13).

2. As a further basis of her claim she relied on the laws of the state of Iowa, paragraph 11 of the petition (R. 13).

In the answer of the guardian *ad litem* and attorney for other parties (R. 17) it is alleged that the Missouri court in applying the Iowa law would look to Missouri law to determine whether or not there was a right of succession. This issue, of course, was never determined because even though the pleader acknowledged that the Iowa law applied, the Supreme Court of Missouri did not apply such law for any purpose. In the other answer filed in the proceedings (R. 18-19) it is specifically alleged that the Iowa courts are bound by the status of adoption or non-adoption by the laws of other states and if the status of adoption actually exists under a foreign state then a child enjoying such a status inherits from the collateral kin of the adopting parents, and thus the law relied upon by plaintiff is specifically pleaded.

The judgment in the trial court was to the effect that petitioner was the adopted daughter of the Cowgills, and gave petitioner a right of inheritance against said adopting parties and concluded that since there was no statutory

adoption the petitioner had no right or claim to the Iowa property (R. 25-26).

The trial court specifically found that the petitioner's claim to said property (concerning which notice was filed in the Iowa proceedings) was based on her claim to status and her reliance on the laws of Iowa (R. 24).

Appeal was taken, and as shown by the motion for new trial the basis of the appeal was that the trial court failed to declare the Iowa law and the rights of petitioner thereunder as same applied to her claim to the intestate property of the deceased Cochrane. See grounds for motion for new trial numbered 41 (R. 33), 58 (R. 36), 60 (R. 36) and 62 (R. 37).

Thus through every possible means known to Missouri procedure, the laws of Iowa were injected into the proceedings in this case.

In the Kansas City Court of Appeals, the Honorable Samuel A. Dew in the dissenting opinion Menees vs. Cowgill, 214 S. W. 2d 561, 567, which necessitated the transfer of the cause to the Supreme Court of Missouri, speaking of the application of the Iowa law, fully recognized that the only purpose of all the parties pleading the Iowa law was that through such law the respondents became and were necessary parties to the Missouri proceedings. Judge Dew had this to say:

> "Whether she has such a claim or can prevail in it, or has no cause of action at all consequent to a decree of adoption is of no concern or responsibility of this court in the present proceedings under Section 1126, except if mentioned in the petition, it may serve as justification for her present action against the parties joined."

That this was the petitioner's theory of the case from the beginning see petition and her ground for new trial No. 26 (R. 31).

The Supreme Court of Missouri wholly ignored the Iowa law so pleaded by all of the parties and determined the entire matter upon principles of Missouri law. Finding no property in Missouri, the petitioner was declared to be the adopted daughter of Lillian Cowgill, and the court announced the Missouri principle that equitable adoption was binding on the adopting parties and their privies. Without discussing or determining the issue of privity (controlled by Iowa law) made by the pleadings and recognized as an issue in the case by Honorable Samuel A. Dew, the Supreme Court declared that petitioner was not the adopted daughter of Guy M. Cowgill, deceased.

REASONS FOR GRANTING WRIT.

Petitioner finds herself in the unnatural position of having been adopted by the respondent, Lillian Cowgill, and not by her deceased husband, Guy M. Cowgill, though from all of the evidence and records in the matter, Guy M. Cowgill acting for himself and for Mrs. Cowgill, made the agreement to adopt. The only reason why she does not have a foster father is because the Supreme Court of Missouri has failed to apply the pleaded and applicable Iowa law to determine whether or not there was justification for the petitioner's action against the respondents in the case. In other words, because the Supreme Court of Missouri failed to determine whether or not there was privity of claim between the parties to the suit, then, except as regards the status of petitioner to Mrs. Cowgill (which was in no way disputed), she has for her efforts a negative determination of an issue without the benefit of discussion or consideration of the only law determinative thereof.

In so far as the descent of the Iowa property is concerned the Missouri court is bound to give full faith and credit to the laws of Iowa which control such descent and not giving any faith nor any credit to such laws, the mandate of the Constitution is not complied with.

In the petition (R. 14) it is specifically alleged that in the event the petitioner should not be found to have the status of an adopted child, then the respondents "described and made parties herein" would be entitled to the intestate property on distribution, the reference being to the Iowa law.

Thus the petitioner recognizes that respondents have a *prima facie* right to the said property subject only to being defeated by the proceedings instituted by her. She in effect is setting up her status as a *defense* to a right recognized in the respondents.

Where the laws of another state are pleaded as a defense, this Court has held that the court of the forum must give full faith and credit to the laws thus pleaded, for to do otherwise would be denying to the pleader a defense that he could not later use. Thus in *Bradford Electric Light Company* v. *Clapper*, 52 S. Ct. 571 (286 U. S. 145), the workmen's compensation law of another state was pleaded as a defense to the proceedings had in the state of the forum. The lower court refused any credence to such foreign law. This Court reversed the decision, and had this to say, l. c. 576:

> "A state may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect to a substantive defense under the applicable law of another state, as under the circumstances here presented, subjects the defendant to irremediable liability. This may not be done."

The Honorable Ewing C. Bland of the Kansas City Court of Appeals believed that the petitioner should have instituted her proceedings in Iowa where the property was located. He said, l. c. 566:

> "Plaintiff says that she could have obtained the relief sought here by filing suit in the State of Iowa. We think that the authority that she has cited in support of this contention (*Genz* v. *Riddle*, 199 Wis. 545, 226 N. W. 957) supports the theory that plaintiff by filing a suit in Iowa can have her status as an adopted child of Guy M. Cowgill recognized and her interest, if any, in the Cochrane estate determined * * *."

No doubt this could have been done as authorized by the Wisconsin case, and had the suit been instituted in Iowa, certainly the equitable adoption laws of Missouri would have been applied by the Iowa court as the Wisconsin court did. If a state court is bound to apply the adoption laws of another state, then it appears to us that necessarily where inheritance is involved a state court would have to apply the laws of the state where the property is located.

It is understandable why Judge Bland believed that petitioner's proceedings should be dismissed. He treated the matter as a "foreign cause of action." The Missouri Supreme Court treats the proceedings as a local action but ignores the substantive defense by the petitioner to the *prima facie* claim of respondents to the Iowa property. We say as did Justice Brandeis in the Clapper case "THIS MAY NOT BE DONE."

In connection with the contention that there is privity of claim between the petitioner and the respondents as to the Iowa property, such as to necessitate a declaration of petitioner's status binding on the respondents, as unqualifiedly required by Missouri law, and all the opin-

ions in this case, we refer the Court to petitioner's motion for rehearing where the matter has been fully discussed to the undoubted conclusions:

1. That privity is germane only to the devolution of property.

2. That parties are in privity who have successive claims or relationships to property.

3. That the laws of Iowa determine the descent of Iowa property.

4. That under the laws of Iowa descent is cast upon parties or the heirs of parties resurrected or assumed to have survived other parties and to have died in possession and ownership of the property.

5. The Iowa law presents successive steps and relationships to property.

6. That all the parties to this suit claim the Iowa property and relationships thereto through the identical statutes of the state of Iowa and at successive steps of such law. The successive steps provided by the Iowa law of descent are shown as 1, 2 and 3 on a chart of Iowa inheritance at the end of the petition. There can be no sidestepping any of the successive steps provided by the law such as shown by the red line, for to do so and determine heirship of Guy Cowgill after the grandparents are resurrected would result in the heirs of Guy Cowgill so determined receiving only two eighths (2/8) of the property instead of the whole thereof as the statutes specifically provide and as results from taking the steps successively as shown by the chart.

7. The petitioner's right to declaration of a status of adoption is absolute under Missouri law, and all the de-

cisions, including those in this case, if only there be parties in privity of claim with her to the Iowa property.

8. The issue of privity has to be determined by Iowa law as it relates to the descent of the Iowa property.

9. There is privity of claim through (a) the Iowa law by which all parties claim their several interests; (b) on the issue of privity of claim until heirship of Guy Cowgill be determined, petitioner claims as his adopted daughter and the respondents claim as his cousins (not the cousins of Cochrane as under the Iowa law she does not have heirs except those who qualify first as heirs of someone else). All parties, therefore, now claim through Guy Cowgill; (c) by virtue of the Iowa statute and through all its successive steps all the parties claim as and are made heirs of Cochrane irrespective of blood relationship. Therefore, there is privity of claim through her as to all parties claiming as heirs of someone else in the line of descent.

10. In Missouri where descent is through blood privity can be between only parties in the blood stream of the ancestor. In Iowa where descent is through position of heirship to parties assumed to have survived other parties then there is privity of claim between those claiming as the heirs of each and all of the parties assumed to have survived in the course of descent.

Privity means nothing more than the relationship that all parties bear to each other who through a single source claim the same property. That this source must be a blood stream of the ancestor in Missouri is shown by the opinion of the Supreme Court in *St. Louis Union Trust Company* v. *Hill*, 79 S. W. 2d 685, l. c. 689:

> "The Legislature had a right to and did in strong and emphatic language change the blood stream of an adopted child. Under our present statutes an adopted

> child's relations with its natural parents cease; and by law it becomes the child of its adopting parents *for every purpose* as fully as though born to the adopting parents in lawful wedlock. In other words, the adopted child is taken out of the blood stream of its natural parents and placed, by the operation of law, in the blood stream of its adopting parents, if adopted under the provisions of our present statutes."

If ever the Missouri Supreme Court specifically approves the inheritance of an adopted child from collaterals of the adopting parties, it will be on the blood stream theory through which such adopted child now inherits from its adopting parents. In *McIntyre* v. *Hardesty*, 149 S. W. 2d 334, l. c. 336, the Supreme Court said:

> "A lawyer friend of the writer used to say, 'property follows the blood.' That thought is emphasized, I think, in *Hockaday* v. *Lynn, supra,* in construing the then statute."

Again, at l. c. 337, it was said:

> "And again, grant that, as it were, it may 'change the blood stream' for inheritable purposes * * * if * * * the right of an adopted child to inherit from the *kindred* of the adopter, was intended by the law-making body to be made, it should so appear in the Legislative Act making such change. In our opinion it does not so appear in the 1917 Act."

If this Missouri theory of inheritance is compared with the position theory of inheritance provided for by the laws of descent and distribution of the State of Iowa, as announced in the cases of *Lawley et al.* v. *Keyes et al.* and *McAllister* v. *McAllister,* cited in the motion for rehearing, where a stepmother inherits from her stepson, we readily see that the two states are very far apart in their theories of inheritance, and as heretofore stated, they are likewise far apart on the matter of status, as only Missouri recognizes equitable adoption as creating a true status.

After all, the problem in this case is simple. It is the problem of giving faith and credit to and applying that state's law which creates a status and giving faith and credit to and applying that state's laws which determine the descent of property, and, since the descent of property determines the question of privity, the then determination that by virtue of the laws of the forum a person has, or has not, a recognized status which is binding upon the other parties to the suit because of the relationship all the parties bear to the property involved under the laws of the state of descent. In other words, it is a question of rendering unto Missouri the things that are Missouri's and rendering unto Iowa the things that are Iowa's.

This is not a case where in the forum the court merely interprets the laws of another state. No question of interpretation is involved because the Iowa law is pleaded and agreed upon by the parties. This is exclusively a case where the Missouri Supreme Court refuses to give effect to, or any faith and credit to the laws of Iowa. Every pleading filed brought those laws into the case, the only issue in the case is controlled by them, and we submit that there can be no determination in this case without some faith and credit being given such laws.

CONCLUSION.

For these reasons, we respectfully submit that this petition for a writ of certiorari should be granted.

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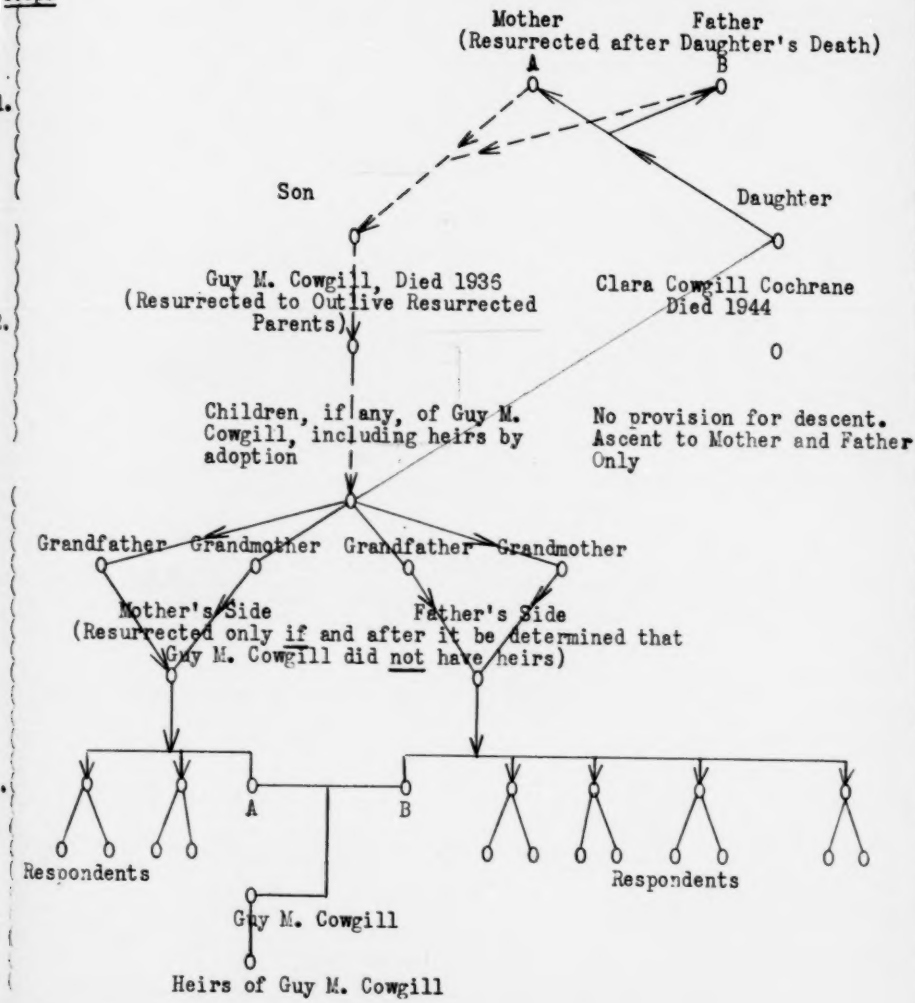
CHART OF THE IOWA LAW OF DESCENT AND DISTRIBUTION

Steps



Note:
1. Course of Descent with the Arrows
2. Positions A and B represent the Mother and Father of Clara Cowgill Cochrane.